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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 In re Subpoena Duces Tecum  
9 served on Masters Enterprises, Inc.  
(Seattle) d/b/a Fax List  
10 Wholesalers

C20-93 TSZ

MINUTE ORDER

11 The following Minute Order is made by direction of the Court, the Honorable  
Thomas S. Zilly, United States District Judge:

- 12 (1) Robert Kahn's Motion for Relief Under Rule 60(b), docket no. 19, is  
13 GRANTED. Kahn is the plaintiff in the underlying action Kahn v. Grand  
14 Slam Enterprises, LLC, et al., which is pending in the Northern District of  
15 Georgia. Kahn moved this Court to compel a third party to the underlying  
16 action, Masters Enterprises ("Masters"), for compliance with a subpoena  
17 duces tecum. See docket no. 1. On January 31, 2020, this Court entered its  
18 Minute Order, docket no. 18, denying Kahn's motion, because Masters  
19 contended that it had fully responded to Kahn's subpoena duces tecum and  
20 therefore Kahn's request that James Masters, Masters' sole shareholder,  
21 officer, and employee, submit his personal computer to forensic analysis to  
22 try to uncover lost data would not be proportional to the needs of the case  
23 pursuant to Federal Rule of Civil Procedure 26(b)(1). Kahn had also failed  
to demonstrate that the material he sought with the subpoena could be  
obtained through other means, such as from the parties to the underlying  
case in Georgia. Kahn now seeks relief from the Court's Minute Order  
pursuant to Federal Rule of Civil Procedure 60(b), which authorizes a court  
to grant relief from an order for misrepresentation and any other reason that  
justifies relief. The Court finds that Kahn has met his burden under Rule  
60(b). Kahn now demonstrates that he has unsuccessfully sought the  
discovery at issue from the parties in the underlying case. See Hershovitz  
Decl., docket no. 20 at ¶¶ 15-19, 21; Cronnolly Decl., docket no. 21 at

¶¶ 12-17. Kahn's computer forensic expert also contends that the requested discovery may be recoverable from Masters' computer despite Masters' contention that the data is lost. Docket no. 19 at ¶¶ 9-11. Because the discovery Kahn seeks is unavailable through other means and it is possible to obtain through forensic analysis of Masters' personal computer, the Court finds that pursuant to Federal Rule of Civil Procedure 26(b)(1), Masters' submission of his personal computer for forensic analysis is proportional to the needs of the case. The Court's January 31, 2020 Minute Order, docket no. 18, is VACATED. The Motion to Compel Compliance with Subpoena Duces Tecum Against Masters Enterprises, Inc. (Seattle) d/b/a Fax List Wholesalers, docket no. 1, is GRANTED. Masters Enterprises, Inc. (Seattle) d/b/a Fax List Wholesalers is ORDERED to take the following actions within 30 days of entry of this Order as follows:

(a) Masters shall produce all documents and data files specified in Kahn's Subpoena to Kahn's counsel by email to marc@hershovitz.com and jessica.kerr@hcmp.com (the production with respect to each document should include, as specified in Kahn's subpoena, all electronic versions and data files from email applications, as well as from word processing, spreadsheet, database, or other electronic data repositories applicable to any attachments, and should be provided where possible in its native file format and should include all original metadata for each electronic documents or data file); and

(b) Consistent with General Order No. 02-20, issued on March 17, 2020, and Proclamation by the Governor No. 20-25, issued on March 23, 2020, as soon as reasonably possible, Masters shall provide Kahn's counsel with access to Masters' computers, cell phones, or other media on which the subpoenaed material was stored so that a computer-forensics expert employed by Kahn can make a complete forensic image copy of the media. Masters shall coordinate with Kahn's counsel with respect to the date and time that Masters will provide Kahn's counsel with such access.

(2) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Dated this 25th day of March, 2020.

William M. McCool  
Clerk

s/Karen Dews  
Deputy Clerk